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June 12, 2001

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**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

Ms. Magalie R. Salas, Secretary  
Federal Communications Commission  
Portal II, TW-A325  
445 Twelfth St., S.W.  
Washington, DC 20554

Re: Implementation of the Local Competition Provisions of the Telecom Act of 1996  
Joint Petition of BellSouth, SBC, and Verizon for Elimination of Mandatory  
Unbundling of High-Capacity Loops and Dedicated Transport.  
CC Docket No. 96-98  
CC Docket No. 98-10

Dear Secretary Salas:

We ask the Commission's indulgence to receive the attached Comments of the  
General Services Administration, which are being filed this morning due to an unforeseen  
staffing shortage that prevented us from filing this material yesterday afternoon.

Sincerely,

Michael J. Ettner  
Senior Assistant General Counsel

cc: Service List

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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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COMMENTS  
of the  
GENERAL SERVICES ADMINISTRATION

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June 11, 2001

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## Summary

GSA addresses a Petition by large incumbent LECs to eliminate unbundling requirements for the high capacity loops and dedicated transport facilities employed for special access services. The joint filing contains data purportedly showing that competitors, particularly fiber-based carriers, are deploying extensive networks with large transmission capacities in nearly all major metropolitan areas.

GSA urges the Commission to reject the Petitioners' claims for several reasons. First, GSA explains that even for many larger business users, access arrangements often employ some facilities owned incumbent carriers. Moreover, GSA notes that several parties responding to a recent request for comments on unbundling requirements for exchange access services also addressed the need for special access unbundling. The comments by these parties explain that competitors face the same prohibitive self-provisioning costs regardless of the service for which the UNEs will be used.

Also, GSA urges the Commission to discount contentions that unbundling requirements deprive new entrants of market-based returns and discourage deployment of new broadband facilities. Contrary to the Petitioners' assertions, UNEs give competitive carriers additional opportunities to configure their networks and thus provide more broadband services to consumers.

Finally, GSA urges the Commission not to heed claims that revenues from special access services are vital in maintaining lower rates for services to residential subscribers. Indeed, interstate rate-of-return data submitted by the Petitioners for the past three years demonstrate that these carriers have ample latitude to forgo non-TELRIC based special access revenues and also maintain low rates for other telecommunications services.

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CC Docket No. 98–10

**COMMENTS  
of the  
GENERAL SERVICES ADMINISTRATION**

The General Services Administration (“GSA”) submits these Comments on behalf of the customer interests of all Federal Executive Agencies (“FEAs”) in response to the Public Notice in CC Docket No. 96–98 (“Notice”) released on April 10, 2001. The Notice seeks comments and replies on a Joint Petition concerning the application of mandatory unbundling requirements to special access (or dedicated private line) services, including high–capacity loops and inter–office transport facilities.

**I. INTRODUCTION**

Pursuant to Section 201(a)(4) of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 481(a)(4), GSA is vested with the responsibility to represent the customer interests of the FEAs before Federal and state regulatory agencies. From their perspective as end users, the FEAs have consistently

supported the Commission's efforts to bring the benefits of competitive markets to consumers of all telecommunications services.

On April 5, 2001, Bell South Corporation and BellSouth Telecommunications, Inc. ("BellSouth"), SBC Communications ("SBC") and the Verizon Telephone Companies ("Verizon") (together the "Joint Petitioners") asked the Commission to find that high-capacity loops and dedicated transport, including dark fiber transport, should not be subject to mandatory unbundling requirements.<sup>1</sup> The Joint Petitioners assert that there are alternatives available for these unbundled network elements ("UNEs"), so that competitors can "self-supply" high capacity loops and transport.<sup>2</sup> Moreover, the Joint Petitioners contend that continuing requirements for access to unbundled loops and transport will deter competition as well as investment in additional broadband facilities.<sup>3</sup>

The Joint Petitioners state that there is a "vibrant wholesale market" and an "avalanche of metro capacity being deployed."<sup>4</sup> They state that in mid-1999 competitive local exchange carriers ("LECs") had 160,000 local fiber miles, and by year-end 2000, this total had increased to 218,000 miles.<sup>5</sup> Similarly, over the same period, the number of fiber networks in the 150 largest metropolitan statistical areas ("MSAs") increased from 486 to 635.<sup>6</sup> Moreover, the Petitioners cite a statement by a coalition of competitive fiber carriers that they themselves "provide, or will provide" advanced fiber transport services, including interoffice transport, and/or dark fiber to

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<sup>1</sup> Joint Petition, p. 1.

<sup>2</sup> *Id.*, pp. 8-28.

<sup>3</sup> *Id.*, pp. 29-31.

<sup>4</sup> *Id.*, p. 3.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

end users and other telecommunications carriers in nearly every region of the lower 48 states and the District of Columbia.<sup>7</sup> With these market developments, the Joint Petitioners claim it is impossible to conclude that competitors will be impaired by lack of access to the incumbent LECs' high-capacity loops and dedicated transport facilities.<sup>8</sup>

As the second prong of its challenge to unbundling requirements, the Joint Petitioners assert that the Commission should grant its request even if competitors might be impaired without access to these UNEs.<sup>9</sup> The Joint Petitioners assert that a large amount of new investment will be necessary in the coming years to keep pace with the growing demand for high-capacity services.<sup>10</sup> According to these carriers, unbundling requirements for these UNEs will punish facilities-based entrants by depriving them of market-based returns; disadvantage incumbent LECs by forcing them to bear all of the risks of new investment but share the rewards with competitors; and harm consumers by deterring wider deployment of broadband facilities.<sup>11</sup>

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<sup>7</sup> *Id.*, pp. 3-4, citing Coalition of Competitive Fiber Providers, *Petition for Declaratory Ruling regarding Application of Sections 251(b)(4) and 224(f)(1) of the Communications Act of 1934, as Amended, to Central Office Facilities of Incumbent Local Exchange Carriers*, CC Docket No. 01-77, filed March 15, 2001, p. 1.

<sup>8</sup> Joint Petition, p. 6.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

**II. COMPETITIVE LECs STILL NEED UNEs FOR SPECIAL ACCESS SERVICES.**

**A. Competitors are deploying large networks in urban areas, but most business users receive telecommunications services through some facilities of incumbent carriers.**

Requirements for special access services are confined almost exclusively to business users, so that competition is primarily measured by subscription of users located in office buildings, industrial facilities, and similar premises. The Joint Petitioners assert that competitive LEC fiber “now reaches” 175,000 commercial buildings, which is about one out of every four commercial buildings in the nation.<sup>12</sup>

Joint Petitioners provide no definition of the word “reach” in this context. Indeed, it may simply mean that a fiber optic facility passes down the street on which the business structure is located. Moreover, it is important to note that “reaching” a building gives no indication of the number of occupants who employ competitive LECs as their provider of special access services.

The Real Access Alliance reported in comments to the Commission in WT Docket No. 99-217 that the Charlton Research Company recently conducted a survey of access granted to competitive telecommunications service providers by building owners and managers.<sup>13</sup> This study showed that of 530 provider requests:

- 81% were for access to office buildings;
- 9% were for access to industrial buildings;
- 3% were for access to mixed use buildings;

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<sup>12</sup> *Id.*, p. 4.

<sup>13</sup> *In the Matter of Provision of Competitive Networks in Local Telecommunications Markets and Wireless Communications Association International, Inc. Petition for Rulemaking to Amend Section 1.4000 of the Commission's Rules to preempt Restrictions on Subscriber Premises Reception or Transmission Antenna Designed to Provide Fixed Wireless Services*, WT-99-217 *et al.*, Further Comments of the Real Access Alliance, January 22, 2001, p. 3.



- 2% were for access to retail buildings;
- 2% were for access to corporate facility buildings;
- 1% were for residential buildings; and
- 2% were for "other" buildings.<sup>14</sup>

Thus, the Real Access Alliance concludes that competitive LECs have demonstrated little interest in obtaining access to structures other than office and industrial buildings. Considering that the requests undoubtedly covered facilities that would also be used to provide switched services, the very low percentage for residential buildings indicates that competitors do not yet envision significant profits in providing advanced services to non-business users.

**B. In a recent Commission proceeding, competitive LECs described their need for UNEs.**

On January 24, 2001, the Commission released a Public Notice in CC Docket No. 96-98 inviting comments on the requirements for UNEs to provide exchange access services.<sup>15</sup> The focus of that activity parallels that of the current proceeding on special access, and several parties extended their comments to address issues raised by the Petitioners in the current case. These comments demonstrate a continuing need to unbundle high-capacity loops and inter-office transport facilities for special access.

Norlight Telecommunications ("Norlight") is a competitive provider offering advanced telecommunications services through a fiber optic system that will span six states.<sup>16</sup> The carrier's primary business is "dedicated high-speed data transmission

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<sup>14</sup> *Id.*, p. 4.

<sup>15</sup> *Comments Sought on the Use of Unbundled Network Elements to Provide Exchange Access Service*, CC Docket No. 96-98, Public Notice, DA-01-169, released January 24, 2001.

<sup>16</sup> Comments of Norlight, April 5, 2001, p. 1.

between government agencies, universities, and small to mid-size businesses with multiple office locations.”<sup>17</sup>

In addressing the question of whether competitors are impaired if they cannot use unbundled loop and transport combinations for offerings other than local exchange service, Norlight explains that an attempt to distinguish facilities used for local exchange from facilities used for special access is simply a pretext on the part of the incumbent LECs to re-litigate the Commission’s impairment decisions in the *UNE Remand Order* two years ago.<sup>18</sup> Norlight notes that without access to UNEs, competitors face the same prohibitive self-provisioning costs regardless of the service for which UNEs will be employed.<sup>19</sup>

In its comments responding to the same Public Notice, EL Paso Networks, LLC (“EPN”) states that it focuses on offering end-to-end connectivity to customers who are providers of telecommunications and information services.<sup>20</sup> From this perspective, EPN reports that even the transport market “is not truly competitive.”<sup>21</sup> Also, EPN explains that competitive fiber providers (“CFPs”) who seek to offer facilities-based advanced transport services in competition with the incumbent LECs are hampered in their efforts to provide these services to competitive LECs.<sup>22</sup> To provide the services, the CFPs need access to the competitive LECs’ equipment collocated in the incumbents’ central offices. However, the incumbent carriers

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17 *Id.*

18 Comments of Norlight, p. 5, citing *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238, released November 5, 1999, (“*UNE Remand Order*”).

19 Comments of Norlight, p. 4.

20 Comments of EPN, April 5, 2001, p. 1.

21 *Id.*, p. 13.

22 *Id.*

generally do not allow CFPs to extend fiber into the central offices to connect with competitive LECs or to place fiber distribution frames in their central offices.<sup>23</sup> Thus, EPN concludes, “[i]t is obvious that barriers remain in the competitive transport market.”<sup>24</sup>

From its perspective as an end user seeking to expand competitive options for dedicated transmission services, GSA is concerned with reports that necessary access to UNEs is denied or impaired. Unless comments filed in response to the instant Notice show a dramatic change in competitive conditions over recent months, GSA urges the Commission to deny Petitioners’ request to suspend unbundling requirements.

### **III. CONTINUING REQUIREMENTS FOR ACCESS TO UNEs WILL PROVIDE SIGNIFICANT BENEFITS FOR CONSUMERS.**

#### **A. Competitive carriers will have more opportunities to configure their networks to offer additional broadband services.**

The Petitioners contend that “overly broad unbundling requirements” for special access will have harmful consequences for consumers.<sup>25</sup> The requirements would disadvantage facilities-based new entrants by depriving them of market-based returns, and harm consumers by deterring deployment of broadband facilities.<sup>26</sup>

GSA urges the Commission to reject these claims. Contrary to Petitioners’ claims, designating high-capacity loops and inter-office transport facilities as UNEs will permit more competitors to participate in local markets, leading to wider

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<sup>23</sup> *Id.*, citing *Petition for Declaratory Ruling filed by the Coalition of Competitive Fiber Providers*, CC Docket No. 01-77, March 15, 2001.

<sup>24</sup> *Id.*

<sup>25</sup> Joint Petition, p. 6.

<sup>26</sup> *Id.*

deployment of broadband facilities. Significantly, more competition will lead to lower prices for consumers.

As Norlight observes, special access services have provided incumbent LECs with a “monopolistic” revenue stream that is inflated relative to underlying costs.<sup>27</sup> Since UNEs must be priced at total element long-run incremental costs (“TELRIC”), they are less costly to users than the equivalent special access services priced at tariff rates. Lower input prices lead to greater profits for competitive LECs, instead of shrinkage of market-based returns, as the Petitioners claim.

In summary, GSA urges the Commission to conclude that elimination of unbundling requirements will place cost and price barriers for competitors. Moreover, by continuing unbundling rules, the Commission will enhance service quality and provide more service options for all telecommunications consumers.

**B. Contrary to claims by the Petitioners, access to UNEs will not impair universal service initiatives.**

Unbundling high-capacity loops and inter-office transport facilities is an important revenue issue for incumbent LECs. Revenues from UNEs priced at their TELRICs are substantially less than the revenue potential from the corresponding special access charges. Since special access charges are set well above incremental costs, the users of these dedicated services, primarily business and government users, have been providing substantial subsidies to other offerings of the incumbent LECs. If the Commission accepts the Petitioners' recommendations, competitive LECs (and ultimately their customers) will be providing similar subsidies.

Petitioners observe that revenues from special access services play an important part in maintaining lower rates for services primarily used by residential

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<sup>27</sup> Comments of Norlight, p. 5.

subscribers, and hence foster important universal service initiatives.<sup>28</sup> GSA urges the Commission not to credit this argument as a basis for accepting Petitioners' recommendations to eliminate unbundling requirements.

In the first place, prices at TELRIC appropriately cover the economic costs of the facilities, as the Commission observed in 1996 in a prior order in the current proceeding.<sup>29</sup> On the other hand, prices set substantially above TELRIC represent an implicit subsidy. Universal service is best served by reducing implicit subsidies, or replacing them by explicit programs if necessary, as the Commission observed last year in its major restructure of access charges to address the proposal by the Coalition for Affordable Local and Long Distance Service ("CALLS").<sup>30</sup>

Moreover, incumbent LECs have ample latitude to forgo special access revenues, and also reduce rates for other services. Reports to the Commission on a consolidated basis for the four large incumbent LECs show very high interstate rates of return during the past few years:

	<u>2000</u>	<u>1999</u>	<u>1998</u>
BellSouth	20.55 %	18.34 %	17.93 %
Qwest	20.15 %	19.41 %	16.22 %
SBC Communications	20.95 %	18.88 %	15.53 %
Verizon Communications	17.48 %	17.34 %	15.55 %

The interstate target rate of return, which is a reference point for the "low-end" earnings adjustment for these price-cap LECs, is now set at 11.25 percent. As GSA

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<sup>28</sup> Joint Petition, pp. 6-7.

<sup>29</sup> CC Docket No. 96-98, First Report and Order, released August 8, 1996, para. 630.

<sup>30</sup> *In the Matter of Access Charge Reform*, CC Docket No. 96-262 *et al.*, Sixth Report and Order in CC Docket No. 96-262 and 94-1; Report and Order in CC Docket No. 99-249; and Eleventh Report and Order in CC Docket No. 96-45, released May 31, 2000, paras. 21-28 and 185-214.

explained in its Comments on the Multi-Association Group Plan earlier this year, the 11.25 percent return target is far above the level necessary to meet the expectations of investors and attract new capital in view of the current conditions in financial markets and the current level of competition for interstate services.<sup>31</sup> However, even applying the 11.25 percent standard, the returns for the four major incumbent LECs — all above 15.5 percent in each of the last three years — are more than adequate to support universal service efforts. These carriers do not need additional revenue from special access connections for competitive carriers in order to price services for residential users at rates that will continue to foster the vital universal service objectives of the Commission.

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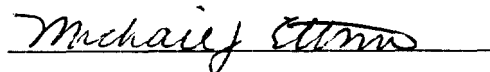
<sup>31</sup> *In the Matter of Multi-Association Group Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256 *et al.*, Comments of GSA, February 26, 2001, pp. 15-16.

#### IV. CONCLUSION

As a major user of telecommunications services, GSA urges the Commission to implement the recommendations set forth in these Comments.

Respectfully submitted,

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June 11, 2001  
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## CERTIFICATE OF SERVICE

I, MICHAEL J. ETTNER, do hereby certify that copies of the foregoing "Comments of the General Services Administration" were served this ~~11th~~ <sup>12th</sup> day of June, 2001, by hand delivery or postage paid to the following parties. *MJE*

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Washington, DC 20554

The Honorable Gloria Tristani,  
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